

***United States Court of Appeals
for the Second Circuit***



**APPELLEE'S
SUPPLEMENTAL
APPENDIX**

77-6080

UNITED STATES COURT OF APPEALS

for the

SECOND CIRCUIT

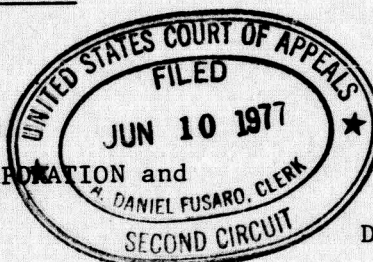
UNITED STATES OF AMERICA,

against

INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION and
THE HARTFORD FIRE INSURANCE COMPANY,

and

AVIS, INC.,



Plaintiff,

Defendants,

Defendant-Intervenor-Appellee.

ON APPEAL FROM AN ORDER OF THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

TRUSTEE-APPELLEE'S SUPPLEMENTAL APPENDIX

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PAGINATION AS IN ORIGINAL COPY

STATEMENT

Richard Joyce Smith, Trustee-Appellee in this proceeding, has taken the position in his brief that all of the issues raised on this appeal have been rendered moot by events subsequent to June 2, 1977, following the order of this court granting an expedited appeal. The documents relating to these recent relevant events are included in this supplemental appendix in order to fully apprise this Court of the present state of facts bearing on this appeal. Appellee relies on Rule 10(e) of the Federal Rules of Appellate Procedure.

The first document, a letter of the Justice Department, relates to the district court's order of May 23, 1977 and appears to have been erroneously deleted from the Joint Appendix.

WHITMAN & RANSOM
Attorneys for Richard Joyce
Smith, Trustee-Appellee
Office & P.O. Address
522 Fifth Avenue
New York, New York 10036
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INDEX TO TRUSTEE-APPELLEE'S
SUPPLEMENTAL APPENDIX

May 24, 1977 letter of the Justice Department Antitrust Division, to Hon. M. Joseph Blumenfeld	334a
Trustee's Fifth Report Pursuant to Trustee Order No. 1, dated June 6, 1977.	337a
Norton Simon, Inc. proposal to Richard Joyce Smith, Esq. as Trustee, dated June 6, 1977	341a
Order of the District Court, District of Connecticut, dated June 7, 1977.	347a
Amendment to Norton Simon, Inc. offer dated June 6, 1977	348a
Letter of F. Timothy McNamara, Esq., signed by Peter D. Lowenstein, Esq. to Hon. M. Joseph Blumenfeld dated June 7, 1977	351a

May 24, 1977

Honorable M. Joseph Blumenfeld
United States District Judge
United States District Court
District of Connecticut
540 Main Street
Hartford, Connecticut 06103

Dear Judge Blumenfeld:

From press and other accounts of the hearing before Your Honor concerning the Avis-Fuqua dispute, it appears that confusion may exist concerning the position of the Antitrust Division. Accordingly, I wish to take this opportunity to state briefly the Division's position on these matters.

1. The Division opposes the Motion by Fuqua to intervene in United States v. ITT-Hartford.

2. The Division did not in the past and does not now take any position with respect to the proposals to amend the Avis by-laws; we did not previously and do not now request that the Trustee not vote the shares either in favor of or against these proposals.

3. The Division takes no position with respect to Fuqua's offer to purchase Avis shares. This stems in part because we have not had an opportunity to evaluate the competitive effects of such a combination.

4. The Division's primary interest is in seeing an orderly and expeditious divestiture of the Avis stock in a manner consistent with maintaining Avis as an aggressive competitor. All things being equal, we tend to support the proposition that public placement may be preferable to private placement, but in view of the infinite number of

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possible private purchasers we certainly do not feel that private placement is necessarily inconsistent with an orderly divestiture. As noted above, we take no position at this time with respect to Fuqua's proposal for a private placement.

I apologize to the Court, the parties and their counsel for any inconvenience caused by our apparent failure to make our position clear during yesterday's hearing and I hope the foregoing rather terse statement of our position will set the record straight.

Sincerely,

Hugh P. Morrison, Jr.
Acting Assistant Attorney General
Antitrust Division

737-2404

cc: See attached

cc (of foregoing letter to Judge Blumenfeld, dated May 24, 1977):

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Washington, D.C. 20026

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UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

- - - - - X

UNITED STATES OF AMERICA,	:	
Plaintiff,	:	
-against-	:	Civil Action No. 13,320
INTERNATIONAL TELEPHONE and	:	
TELEGRAPH CORPORATION and	:	
THE HARTFORD FIRE INSURANCE	:	
COMPANY,	:	
Defendants.	:	
and	:	
AVIS, INC.,	:	
Defendant Intervenor.	:	

- - - - - X

TRUSTEE'S FIFTH REPORT
PURSUANT TO TRUSTEE ORDER NO. 1

To The Honorable M. Joseph Blumenfeld
United States District Judge
District of Connecticut

I. This fifth report is submitted by me to the Court pursuant to Trustee Order No. 1 dated January 6, 1975 wherein this Court appointed me as Trustee to manage and dispose of the undivested interest of International Telephone and Telegraph Corporation in Avis, Inc. ("Avis") and its subsidiaries under the supervision of this Court and subject to the provisions of Trustee Order No. 1, and such further orders or directions that the Court might thereafter make.

II. As Trustee I presently hold 3,743,504 shares of Avis common stock (The Trust Property) representing approximately 47% of the outstanding shares.

III. By virtue of the provisions of Trustee Order No. 3 dated January 14, 1976, I was directed to dispose of the Trust Property by way of a series of public offerings commencing in the first half of 1976 and continuing from time to time thereafter at such intervals and in such amounts as I and my financial advisors deemed appropriate under all of the circumstances and in the best interest of Avis and its shareholders. As of January 14, 1976 I had not received any firm offer for the purchase of the Trust Property and was not engaged in any negotiations with any party which would lead to such an offer. Accordingly, after conferring with my counsel and financial advisors and after consultation with six major investment bankers regarding disposition of the Trust Property, I concluded that the Trust Property should be disposed of by a series of public offerings subject to market conditions existent at the time of said offerings.

IV. Thereafter, in accordance with Trustee Order No. 3, I sold 1,250,000 shares of Avis Common Stock at a price of \$9.25 per share, thereby reducing my holdings of Avis stock to the current 47% of outstanding shares. I had planned to sell an additional 2,000,000 shares at a public offering in mid-June 1977.

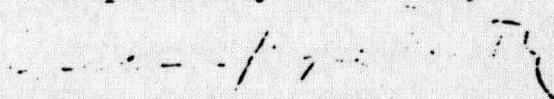
V. On Friday, June 3, 1977, in the early afternoon, I was advised by representatives of Norton Simon, Inc. ("NSI") that subject to a favorable vote by the Board of Directors of that Company, it was prepared to make a cash offer of \$20.25 per share for the 3,743,504 shares held by me as Trustee. The offer would also contain a commitment by NSI either to make a cash tender offer for all of the other Avis shares outstanding for \$20.25 per share or to effect a cash merger with a wholly-owned subsidiary of NSI at the same amount. I immediately released this information to the public and instructed my counsel to notify the New York Stock Exchange where trading in Avis stock was stopped at about 3:45 P.M.

VI. On Monday, June 6, 1977, I received the formal offer from NSI whereupon my counsel requested counsel for Avis to notify the Securities and Exchange Commission that the registration statement concerning my proposed public sale was being withdrawn. As soon as I learned of the probability of the NSI offer, I consulted with my financial advisors, Raymond S. Troubh and Ora C. Roehl. It is my view that, in the light of the requirements of the Consent Decree, the price and conditions of the NSI offer are fair and advantageous to all of the stockholders of Avis. Having regard for my responsibilities to all of the shareholders of Avis, I believe that this proposal should be considered by the Court in lieu of the public offering program contemplated by Trustee Order No. 3.

I have been advised that International Telephone and Telegraph Corporation favors acceptance of NSI's offer. A copy of NSI's offer is annexed hereto marked Exhibit A and by this reference made a part hereof.

WHEREFORE, I respectfully request that the Court issue an order authorizing and directing me to accept the offer of Norton Simon, Inc. to purchase the 3,743,504 shares of Avis stock held by me as Trustee in accordance with the terms thereof.

Respectfully submitted,


Richard Joyce Smith

Dated: New York, New York
June 6, 1977

- 341 a -
NORTON SIMON INC

June 6, 1977

Richard Joyce Smith, Esq.
as Trustee
c/o Whitman & Ransom
522 Fifth Avenue
New York, New York 10036

Dear Mr. Smith:

Norton Simon, Inc. ("NSI") hereby offers to purchase from you the 3,743,504 shares of Common Stock, par value \$1.00 per share ("Shares"), of Avis, Inc. ("Avis") held by you as Trustee pursuant to the order dated January 6, 1975 of the United States District Court for the District of Connecticut (the "Court"), as amended and supplemented, in the action entitled United States of America v. International Telephone and Telegraph Corporation (Civ. No. 13,320), upon the following terms and conditions:

1. The price to be paid by NSI to you for the 3,743,504 Shares held by you shall be \$20.25 per Share in cash.
2. Subject to the requirements of applicable law, as soon as practicable after the consummation of such purchase, NSI or a wholly-owned subsidiary of NSI will consummate a cash tender offer (the "Tender Offer") in the United States to acquire any and all of the remaining Shares at a price of \$20.25 per Share, or a

Richard Joyce Smith, Esq.

2

June 6, 1977

wholly-owned subsidiary of NSI will consummate a cash merger agreement (the "Merger Agreement") with Avis pursuant to which the holders of the remaining Shares will receive \$20.25 per Share. The determination of whether the Tender Offer or the Merger Agreement shall be effected shall be at the option of NSI. In either event, NSI intends that Avis would continue as a separate company and that the present management and (consistent with applicable law) present Board of Directors of Avis would continue in office with such additional directors as may be designated by NSI.

3. Consummation of NSI's purchase of Shares from you, entry into the Merger Agreement and the making of the Tender Offer are subject to the following conditions, which are for the sole benefit of NSI and may be waived by NSI in whole or in part:

(a) The Court, by appropriate order and without any conditions adverse to NSI (the "Order"), shall have authorized and approved your sale of the 3,743,504 Shares held by you to NSI pursuant to the terms hereof;

(b) The Order shall have become final, no appeal therefrom or other application for appellate review thereof shall be pending and the time for any such appeal or review shall have expired;

(c) NSI shall receive good and marketable title to the 3,743,504 Shares held by you, free and clear of all

Richard Joyce Smith, Esq.

3

June 6, 1977

liens, claims and encumbrances;

(d) There shall not have been instituted or threatened any action or proceeding by any governmental agency or authority challenging NSI's acquisition of Shares or the payment therefor or the Merger Agreement or Tender Offer;

(e) There shall not, subsequent to December 31, 1976, have occurred or be threatened any material adverse change in the business, financial condition or results of operations of Avis and its subsidiaries or affiliates taken as a whole;

(f) There shall not have occurred subsequent to the date hereof (i) any general suspension of, or limitation on prices for, trading of securities on The New York Stock Exchange, Inc. or (ii) any declaration of a banking moratorium or suspension of payments in respect of banks in the United States;

(g) Avis shall not have authorized, proposed or announced its intention to propose a merger, consolidation, acquisition of assets, disposition or distribution of assets or any cash dividend (other than regular quarterly cash dividends not in excess of \$0.10 per Share) or material change in its capitalization or increase in the number of outstanding shares (other than through the exercise of presently existing stock options), or any comparable event not in the ordinary course of business;

(h) Prior to the entry of the Order, the Board of Directors of Avis, by the requisite vote, shall have approved

Richard Joyce Smith, Esq.

4

June 6, 1977

and recommended the Tender Offer or the Merger Agreement, whichever shall have been elected by NSI, and shall have taken such other action as reasonably may have been requested by NSI to facilitate consummation of the Tender Offer or Merger Agreement at the earliest date practicable after the entry of the Order; and

(i) There shall not be any judgment or order of any court or governmental agency or authority enjoining NSI's acquisition of the Shares or the Tender Offer or the Merger Agreement.

4. If subsequent to the date hereof Avis should split, combine or otherwise change the Shares, or issue any dividends payable in Shares or other capital stock of Avis or securities convertible into or exchangeable for any such securities, then the price to be paid pursuant to Sections 1 and 2 and the character of the securities to be acquired pursuant thereto shall be appropriately adjusted.

5. The purchase of the 3,743,504 Shares held by you shall take place at the offices of NSI at 9:30 A.M. on the first business day following the satisfaction of the condition set forth in Section 3(b), whereupon NSI shall cause to be delivered (see Section 6) to you federal funds in the amount of \$75,805,956, against receipt from you of the Shares in transferrable form. NSI may, at its election, take title to such Shares through a wholly-owned subsidiary of NSI.

In the event that the condition set forth in Section 3(a) shall not have been satisfied by June 22, 1977 or the condition set forth in Section 3(b) shall not have been satisfied by August 22, 1977 or in the event that there shall at any time have occurred any state of facts which shall have rendered incapable of satisfaction any of the conditions set forth in Section 3, then, in any such event, NSI shall have the right, at its option, to terminate its obligations hereunder. Nothing herein contained shall preclude NSI from, at its option, extending the time for performance or fulfillment of any of the conditions set forth in Section 3.

6. Upon your (i) submission of an application to the Court seeking either approval of or instructions (without any negative recommendation by you) with respect to your acceptance of this Offer, and (ii) requesting that the Court require any other offeror for the Shares held by you to offer on an all cash basis for all Shares and on terms no less favorable than those provided for herein, NSI shall deposit with Manufacturers Hanover Trust Company (or another bank which is a member of the New York Clearing House) \$160,000,000 in the form of cash or marketable securities. The investment of such deposit shall be at the direction of NSI and the income of such deposit shall belong and be paid to NSI. NSI shall instruct such bank to make payment to you of the amount

Richard Joyce Smith, Esq.

6

June 6, 1977

referred to in Section 5 in the manner and at the time and place referred to therein. Upon the consummation of the Merger Agreement or Tender Offer, as the case may be, NSI shall instruct such bank to apply the balance of such \$160,000,000 to the payment required in connection therewith or such portion thereof as may be required in connection therewith and return the balance thereof to NSI. If the obligations of NSI hereunder are terminated for any reason, such deposit or the remaining balance thereof, as the case may be, shall be returned by such bank to NSI at NSI's request. All instructions to such bank shall be by NSI alone and shall be final and binding upon such bank.

We would appreciate your prompt advice as to the action you take with respect to this Offer. We are, of course, prepared to meet with you and the officers and Board of Directors of Avis with respect to this Offer.

Very truly yours,
NORTON SIMON, INC.

By David J Mahoney

Accepted

Richard Joyce Smith, as Trustee

Upon reading the foregoing Trustee's Fifth Report dated June 6, 1977, it is

ORDERED that a hearing be held before this Court on the 15th day of June, 1977 at ^{11:00} ~~XXXX~~ A.M., or as soon thereafter as the Court can hear the same, at the United States Courthouse, Hartford, Connecticut, for the purpose of considering an offer made by Norton Simon, Inc. to said Trustee for the purchase of shares of Avis, Inc. held by said Trustee for \$20.25 per share, which offer also contains a commitment on the part of Norton Simon, Inc. to similarly acquire for \$20.25 per share the shares of Avis, Inc. held by public shareholders, and it is further

ORDERED that notice of the hearing be timely given to all parties by mailing copies of the said Trustee's Report and this Order on or before June 7, 1977.

E N T E R

/s/ M. Joseph Blumenfeld
M. Joseph Blumenfeld
United States District Judge

Dated: Hartford, Connecticut
June 7, 1977

been satisfied by June 22, 1977, or the condition set forth in Section 3 (b) shall not have been satisfied by August 22, 1977 or in the event that there shall at any time have occurred any state of facts which shall have rendered incapable of satisfaction any of the conditions set forth in Section 3, then, in any such event, NSI shall have the right, at its option, to terminate its obligations hereunder. Nothing herein contained shall preclude NSI from, at its option, extending the time for performance or fulfillment of any of the conditions set forth in Section 3.

The following paragraph is to be substituted in place of Paragraph #6 in the June 6, 1977 offer:

6. Upon your submission of an application to the Court seeking either approval of or instructions (without any negative recommendation by you) with respect to your acceptance of this Offer, NSI shall deposit with Manufacturers Hanover Trust Company (or another bank which is a member of the New York Clearing House) \$160,000,000 in the form of cash or marketable securities. The investment of such deposit shall be at the direction of NSI and the income of such deposit shall belong and be paid to NSI. NSI shall instruct such bank to make payment to you of the amount referred to in Section 5 in the manner and at the time and place referred to therein. Upon the consummation of the Merger Agreement or Tender Offer, as the case may be, NSI shall instruct such bank to apply the balance of such \$160,000,000 to the payment required in connection therewith or such portion thereof as may be required in

connection therewith and return the balance thereof to NSI. If the obligations of NSI hereunder are terminated for any reason, such deposit or the remaining balance thereof, as the case may be, shall be returned by such bank to NSI at NSI's request. All instructions to such bank shall be by NSI alone and shall be final and binding upon such bank.

Respectfully submitted,

F. Timothy McNamara

Of Counsel WHITMAN & RANSOM

By _____
Peter D. Lowenstein

F. TIMOTHY McNAMARA

ATTORNEY AT LAW
102 OAK STREET
HARTFORD, CONNECTICUT 06106

June 7, 1977

(203) 249-8458

Hon. M. Joseph Blumenfeld
U.S. District Court
450 Main Street
Hartford, Connecticut 06106

Re: United States of America v. International
Telephone & Telegraph Corporation, et al
Civil Action No. 13,320

Dear Judge Blumenfeld:

Subsequent to our filing of the Trustee's Fifth Report Pursuant to Trustee Order No. 1 on the morning of June 7, 1977, we received advice from our office that Norton Simon, Inc. ("NSI") had amended its offer dated June 6, 1977 for the purchase of the shares of Avis, Inc. held by the Trustee. That offer is annexed as Exhibit A to the Trustee's Fifth Report.

NSI's Amendments are concerned solely with paragraphs "5" and "6" of its offer. Paragraph "5" is amended at the second line thereof by inserting the following words after the word NSI:

"or such other place as is
mutually agreed"

Paragraph "6" is amended by: deleting "(i)" from the first line of that paragraph; deleting all of the fourth line of that paragraph except the words "this offer"; deleting the fifth and sixth lines of the paragraph entirely; and deleting the words "for herein," from line 7 of that paragraph.

We respectfully request that the amendments to paragraphs "5" and "6" of the NSI offer which are set forth on a separate sheet of paper attached hereto be supplied to the Trustees Fifth Report and form part of the record before the Court in connection with the hearing

F. TIMOTHY McNAMARA

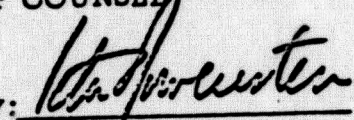
Page Two

to be held on June 15, 1977 at 11:00 a.m.

Copies of this letter and the amendments to paragraphs "5" and "6" of the NSI offer will be mailed to all parties together with the Trustees Fifth Report and the Order of this Court dated June 7, 1977.

Respectfully yours,
F. Timothy McNamara
WHITMAN & RANSOM
OF COUNSEL

By:



Peter D. Lowenstein
A Member of the Firm

PDL/mc
Enc.

UNITED STATES COURT OF APPEALS
For The Second Circuit

UNITED STATES OF AMERICA,

Plaintiff

against

AFFIDAVIT
OF
SERVICE

INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION,
and THE HARTFORD FIRE INSURANCE COMPANY,

Defendants

and

AVIS, INC.

Defendant-Intervenor-
Appellee

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

KENNETH J. MARTE, being duly sworn, deposes and
says:

I am over the age of 18 years and in the employ
of Whitman & Ransom, of counsel to F. Timothy McNamara,
attorney for the Trustee. I am not a party to this action.

On the 9th day of June, 1977 I served the Trustee-
Appellee's Supplemental Appendix and the Brief for the
Trustee-Appellee on the attorneys listed below at the addresses

designated by said attorneys for that purpose by depositing
a true copy of same, securely enclosed in a postpaid properly
addressed wrapper in an official depository under the exclu-
sive care and custody of the United States Postal Service
located in the lobby of 522 Fifth Avenue, New York.

Davis Polk & Wardell, Esqs.
One Chase Manhattan Plaza
New York, New York 10005

Matthew E. Jaffe, Esq.
Antitrust Division
Department of Justice
Washington, D.C. 20530

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New Haven, Connecticut 06510

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799 Main Street
Hartford, Connecticut 06103

Wolf Popper Ross Wolf & Jones, Esq.
845 Third Avenue
New York, New York 10022

Kenneth J. Marte
Kenneth J. Marte
Kenneth J. Marte

Sworn to before me

this 9 day of June, 1977.

Marin Juss

NOTARY PUBLIC, State of New York
No. 03-665275
Qualified in Bronx County
Commission Expires March 30, 1978

3 copies

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6-9-1977
PAUL, WEISS, RIFKIND, WHARTON & GARRISON

By Clara A. Haver